Maryland Judiciary Statewide Evaluation of Alternative Dispute Resolution

What Works in District Court Day of Trial Mediation: Effectiveness of Various Mediation Strategies on Short-Term and Long-Term Outcomes

Maryland court rules permit judges to order or refer civil cases in the District Court to mediation or a settlement conference. This study identifies the mediator strategies and program factors affecting case outcomes. Statistical analysis of actual mediations revealed four groups of mediator strategies for study. **Mediators often use more than one set of strategies: the groupings described are strategies commonly used together. These are not labels for types of mediators.**

Reflect

Reflecting Strategies:
- Reflecting emotions & interests

SHORT TERM: Reflecting strategies are positively associated with participants reporting:
- that the other person took responsibility and apologized
- an increase in self-efficacy (belief in one's ability to talk and make a difference)
- an increase from before ADR to after ADR in their sense that the court cares

LONG TERM: This strategy was not statistically significant in any positive or negative outcomes.

Elicit

Eliciting Strategies:
- Asking participants to suggest solutions
- Summarizing solutions that have been offered
- Asking participants how those solutions might work for them

SHORT TERM: Eliciting participant solutions was positively associated with participants reporting that:
- they listened & understood each other & jointly controlled the outcome
- the other person took responsibility and apologized

Eliciting was positively associated with reaching an agreement in ADR.
Eliciting participant solutions was negatively associated with participants reporting ADR practitioner:
- controlled the outcome
- pressured them into solutions and prevented issues from coming out

LONG TERM: Participants were more likely to report a change in their approach to conflict and were less likely to return to court for an enforcement action.

Offering / Tell

Offering Strategies:
- Offering opinions
- Advocating for their own solutions
- Offering legal analysis *(long term only)*

SHORT TERM: This strategy was not statistically significant in any positive or negative outcomes.

LONG TERM: The more offering strategies are used, the less participants report:
- The outcome was working
- They were satisfied with the outcome
- They would recommend ADR
- They changed their approach to conflict

Caucus

Caucusing is the practice of meeting with the participants on each side of the case separately and privately.

SHORT TERM:
The greater the percentage of time participants spend in caucus, the *more likely* participants report:
- the ADR practitioner: controlled the outcome, pressured them into solutions, and prevented issues from coming out.
- an increase in a sense of powerlessness, an increase in the belief that conflict is negative, and an increase in the desire to better understand the other participant.

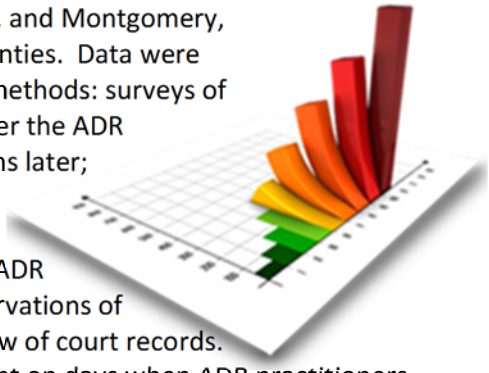
The greater the percentage of time in caucus, the *less likely* the participants report:
- they were satisfied with the process and outcome, and the issues were resolved with a fair and implementable outcome.

LONG TERM: The greater the percentage of time participants spend in caucus, the *less likely* participants report:
- consideration of the other person,
- self-efficacy (belief in one's ability to talk and make a difference), and
- a sense that the court cares about resolving conflict from before the ADR session to several months later.

Long-term analysis finds that greater the percentage of time participants spend in caucus, the more likely the case will return to court in the 12 months after mediation for an enforcement action.

Data Collection

Data for this study were collected in the District Court Day of Trial programs in Baltimore City, and Montgomery, Calvert, and Wicomico Counties. Data were collected through several methods: surveys of participants before and after the ADR session as well as six months later; surveys of the ADR practitioners; behavior coding of participants and ADR practitioners through observations of the ADR process; and review of court records.



Researchers were present on days when ADR practitioners were scheduled to appear for a court docket. Once the ADR practitioner received a case referral and solicited the parties' agreement to participate in ADR, researchers requested the parties consent to participate in the research study. In all four counties, pre-intervention questionnaires were given before the ADR process. Next, researchers observed the ADR process and coded the behaviors of the ADR practitioners and the participants. At the conclusion of the process, participants were escorted back to the courtroom to either record their settlement or proceed with their trial. At the conclusion of the court process, post-intervention questionnaires were given.

Three months following the ADR process, researchers called participants to conduct a follow-up interview. Finally, 12 months after the court date, researchers reviewed the electronic court records of each observed case to determine if the parties had required further intervention by the court. When the electronic record was not clear, researchers reviewed the original case file at the Clerk's office.

Analysis

This two page flier simplifies a rigorous study which used a variety of statistical tools to determine the results. A detailed discussion of the data collection instruments and analysis tools can be found in the full report; see below for more information.

Returning to Court

More likely to return to court:

Caucus: Cases in which a greater percentage of time was spent in caucus are more likely to return to court.

Less likely to return to court:

Eliciting: Cases in which ADR Practitioners used more eliciting strategies are less likely to return to court.

Mediation experience: Cases in which the ADR practitioner had greater ADR experience in the previous 12 months are less likely to return to court.

Racial Match

Having at least one ADR practitioner at the table match the race of the responding participant was **positively** associated with participants reporting that they listened and understood each other in the ADR session and jointly controlled the outcome, and an increase in a sense of self-efficacy (belief in one's ability to talk and make a difference) and an increase in the sense that the court cares from before to after the ADR session.

The Maryland Judiciary has a long-term commitment to building ADR programs in Maryland. The Administrative Office of the Courts commissioned this study to be conducted by independent researchers in its ongoing effort to provide the highest quality service to Marylanders.

This research, commissioned by the **Maryland Judiciary**, is part of its Statewide Evaluation of ADR. The project was led by the Administrative Office of the Courts, and funded in part by a grant from the State Justice Institute. Salisbury University and the University of Maryland worked on the statewide study under memoranda of understanding with AOC. The research for this portion of the study was conducted by Community Mediation Maryland and the Bosserman Center for Conflict Resolution at Salisbury University. Lorig Charkoudian, PhD, served as lead researcher. Additional information about the research methods, data collection tools, and statistical analyses, and the full study can be found in the full report at: http://www.mdcourts.gov/courtoperations/adrprojects.html

Salisbury University

Maryland Judiciary

Community Mediation Maryland
your conflict, your solutions

SJI State Justice Institute